

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

CELLTRACE LLC,

Plaintiff-Counterclaim Defendant,

v.

AT&T, INC. et al.,

Defendants-Counterclaim Plaintiffs.

Civil Action No. 6:09-CV-294-LED

**Jury Trial Demanded**

**DEFENDANT T-MOBILE USA, INC.'S UNOPPOSED MOTION FOR  
LEAVE TO FILE ITS AMENDED ANSWER AND COUNTERCLAIMS**

Defendant T-Mobile USA, Inc. ("T-Mobile") hereby submits this Unopposed Motion to for Leave to File its First Amended Answer and Counterclaims to Plaintiff's First Amended Complaint, pursuant to Federal Rule of Procedure 15(a) and 16(b).

In the present action, Plaintiff has accused T-Mobile of patent infringement, where such allegations of infringement involve the operation of T-Mobile's network and cell phones operating on that network. Some of the phones operating on T-Mobile's network are manufactured by Samsung Electronics Co., Ltd. ("Samsung"). Last month, Plaintiff's parent corporation entered into an agreement with Samsung that grants Samsung and certain third parties a variety of rights and immunities under the patents-in-suit ("Samsung Agreement"). A copy of the Samsung Agreement was first produced by Plaintiff on March 11, 2011.

As a result of the Samsung Agreement, T-Mobile requests leave to amend its answer to add an affirmative defense that Plaintiff's claims against T-Mobile are barred, in whole or in part, by express or implied license, release, and/or the doctrine of patent exhaustion. T-Mobile is

not seeking to make any other additions or changes to its answer and counterclaims at this time. Because of the very recent nature of these significant events, as well as T-Mobile's diligent effort to analyze the Samsung Agreement and confer with Plaintiff's counsel, T-Mobile has good cause to amend at this time. Furthermore, Plaintiff will not suffer any prejudice as a result of this amendment.

T-Mobile has conferred with Plaintiff and Plaintiff does not oppose this motion. A copy of T-Mobile's First Amended Answer and Counterclaims to Plaintiff's First Amended Complaint is attached as Exhibit 1. A redline showing the new language in T-Mobile's First Amended Answer and Counterclaims to Plaintiff's First Amended Complaint is attached as Exhibit 2.

For the reasons stated herein, T-Mobile respectfully requests leave to file its First Amended Answer and Counterclaims to Plaintiff's First Amended Complaint.

Dated: April 5, 2011

Respectfully submitted,

By: /s/ Benjamin Hershkowitz

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*Attorneys for Defendant-Counterclaim Plaintiff T-Mobile USA, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2011, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Tyler Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Benjamin Hershkowitz  
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